

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 151 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

JAMABHAI AMBABHAI VANKAR

Versus

STATE OF GUJARAT

Appearance:

MR BHARDA for appellant

MR LR PUJARI, ADDL. PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE A.K.TRIVEDI

Date of decision: 08/04/99

ORAL JUDGEMENT (Per Patel, J.)

Father of deceased Hiraben has filed this application under section 397 of the Criminal Procedure Code against the order of acquittal recorded by learned Additional Sessions Judge, Mehsana at Patan in Sessions Case No. 105 of 1995 on 13.1.1998.

2. Hiraben, the deceased, got married with the sole accused before about 9 years. Her statement was recorded

on 17.6.1994 wherein she has stated that she was being tortured by her husband, and, as a result of the same, by pouring Kerosene on herself, she has committed suicide. After completion of investigation, charge sheet came to be filed before the Court, which committed the accused to the Court of Sessions where the accused pleaded not guilty and contended that he is entirely innocent. On appreciation of evidence, learned Additional Sessions Judge acquitted the accused.

3. Mr. Bharda, learned advocate has taken us through the record. He submitted that there are chances of changing the statement recorded before the Executive Magistrate. Her statement was recorded by the police wherein she has stated that she was tortured and therefore she has committed suicide. In his submission, this itself is sufficient circumstance to punish the accused.

4. The trial Court has considered the evidence of Executive Magistrate who has recorded the statement of the deceased at about 6.25 pm. on 17.6.1994 after usual formalities required to be followed. Before the Executive Magistrate deceased Hiraben has stated that she was married to the accused before about 9 years and she was not tortured by anyone. She has further stated that she was residing with her husband and father-in-law. She has also stated that while she was preparing tea on a stove, on account of accident, she sustained burn injuries, as a result of which she raised shouts whereupon the members of the family and neighbours came running to save her, and she was removed to the hospital. The trial Court has given importance to this dyeing declaration recorded by the Executive Magistrate. It is required to be noted that as observed by the trial Court, the statement is recorded by an independent person wherein there is nothing about the torture. The trial Court has disbelieved the statement recorded by the police on the ground that the police has not obtained opinion of the Doctor whether the deceased was in a fit condition to make statement. The Executive Magistrate has recorded the dyeing declaration in accordance with law in the presence of a Doctor, and therefore, the trial Judge thought it fit to place reliance on the statement recorded by the Executive Magistrate.

5. This is not a case of eye witnesses. Dyeing declaration of the deceased clearly reveals that on account of an accident while preparing tea on stove, she has sustained burn injuries. There is no evidence to indicate that the cruelty was to such an extent which

would compel her to commit suicide.

6. It is required to be noted that this is a Revision Application against an order of acquittal. The State has not preferred any appeal so far. Mr. Bharda submitted that if this Revision Application is rejected, it may affect the merits of the Appeal if any preferred by the State. Suffice it to say that even if this Criminal Revision Application is rejected, it will be always open for the Court to appreciate the evidence and come to a different conclusion if the State prefers an appeal. Scope of Revision being very limited, we would not interfere with the impugned order.

This Revision Application stands rejected.

csm./ -----